

Title 141 - THE NEBRASKA EQUAL OPPORTUNITY COMMISSION
NEBRASKA CIVIL RIGHTS ACT OF 1969
PUBLIC ACCOMMODATIONS

Chapter 2 - PROCEDURE.

001 Filing, Amending and Withdrawal of Complaint.

001.01 Who May File. Any person who claims to have been injured by a discriminatory public accommodations practice may file a charge with the Commission personally or by her or his agent or attorney. The charge shall be in writing and under oath of the person filing.

001.02 A charge shall be filed with the Commission. The charge shall be signed by the complainant or by her or his agent or attorney under oath or affirmation before a notary public or other person duly authorized by law to administer oaths and affirmations. The charge may be filed on forms provided by the Commission, blank copies of which will be supplied by the Commission upon request and will be available at the Commission offices. Notarial service will be without charge by the Commission.

001.03 Contents. A charge shall contain the following:

001.03A The full name, address, and telephone number, if any, of the person claiming to be aggrieved.

001.03B The full name, address, and telephone number, if known, of the respondent.

001.03C A plain and concise statement of the facts alleged to constitute a discriminatory public accommodations practice or practices.

001.03D The date and place in the State of Nebraska where the alleged discriminatory public accommodations practice was committed.

001.03E A statement as to any other action, if any, civil or criminal, instituted by or on behalf of the complainant in any other forum, based on the same facts as alleged in the charge, together with a statement as to the status or disposition of such other action.

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001.04 The charge may be filed by personal delivery, ordinary mail, or registered or certified mail, addressed to the office of the Commission in Lincoln or any branch office of the Commission.

001.05 The Attorney General of the State of Nebraska shall, in like manner as the complainant, make, sign, and file such a charge.

001.06 Notwithstanding the provisions of 2.001.03 of these Rules and Regulations, a charge may be amended as follows: to cure technical defects or omissions; to clarify and amplify allegations made therein; to allege additional acts which constitute discriminatory public accommodations practice or practices which are related to or growing out of the subject matter of the original charge. All such amendments will relate back to the original filing date. Upon any amendment of a charge, a copy thereof shall promptly be served by the Commission on the respondent by certified or registered mail or through personal service.

001.07 Answer to Charge. The respondent may file an answer to the charge at any time prior to the expiration of twenty (20) days after the date she or he receives the charge. The answer shall be sworn to before a notary public. With leave of the Commission an answer may be amended at any time. The Commission will permit answers to be amended whenever it believes it would be reasonable and fair to do so.

001.08 Time of Filing. The charge must be filed within ten (10) days from the date of the occurrence of the alleged discriminatory public accommodations practice.

001.09 Withdrawal of Charge. A filed charge or any part thereof may be withdrawn, by request in writing by the complainant, and written notice of any such withdrawal shall be sent by the Commission, by registered or certified mail, to all parties who have been previously notified of the charge.

002 Action Upon Charge.

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002.01 Duties of Commission Staff. Each charge filed by a complainant, or by her or his agent or attorney, shall be docketed and given a case number, and a copy of said charge shall promptly be served by the Commission on the respondent in person or by registered or certified mail.

002.02 The Commission shall institute an investigation by its employees to ascertain all of the facts relating to the alleged discriminatory public accommodations practice or practices set forth in the charge. The staff shall initially solicit information from all parties and utilize interrogatories, depositions, or subpoenas to facilitate a prompt investigation. Interrogatories shall be answered within fifteen (15) days of receipt and the person to whom the interrogatories are directed shall be so informed.

002.03 Dismissal. The Report of the investigation shall be presented to the Commission by the Executive Director. The Commission shall dismiss the charge (i) if it is determined that the Commission does not have jurisdiction over the matter; or (ii) if it is determined that there is not reasonable cause to believe that the alleged discriminatory public accommodations practice has been committed; or (iii) if the matter is adjusted and settled during the investigation; or (iv) if the complainant has failed to cooperate fully in the investigation of the charge; or (v) if a complaint has been filed with the County Attorney.

No Commission employee, during the investigation of a charge, shall propose terms of settlement and adjustment to the respondent's attorney or to the respondent; but, at the request of the respondent's attorney or the respondent, may advise the respondent of possible terms of settlement and adjustment, and shall communicate to the complainant and to the Commission any terms of settlement and adjustment proposed by the respondent. Any terms of settlement arrived at during the investigation shall be submitted to the Commission and the charge shall be dismissed, and the case closed as having been adjusted and settled during investigation.

The Commission shall notify all parties of any dismissal of a charge by personal service or registered or certified mail, which notification shall specify the reason or reasons for dismissal.

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003 Reasonable Cause Findings.

003.01 Conference. If the Commission, based upon the report of its investigation by its employees, determines that there is reasonable cause to believe that the alleged unfair employment practice has been committed, the Commission shall appoint a Commissioner or an employee of the Commission to undertake a conciliation conference with the respondent and complainant in order to eliminate the effect of the unfair practice and to prevent repetition thereof.

Both the complainant and the respondent shall be notified of the time and place of a conciliation conference by personal service or registered or certified mail at least ten (10) days prior to the date set for the conference, and the notice shall advise the parties of the conciliator who will participate in said conciliation conference. The respondent shall appear at the conciliation conference either in person or by attorney, or both. The place of the conference designated by the Commission shall be at a place reasonably convenient for the parties and in the county in which the charge arose. In the event of failure or refusal of the respondent to appear or participate in the conciliation conference, the Commission may issue a written complaint and order a public hearing.

003.02 Non-disclosure. The members of the Commission and its staff shall not make public what has occurred in any conciliation conference without the written consent of both parties except evidence concerning endeavors at a conciliation may be made public if a public hearing is ordered.

003.03 Settlement and Order.

003.03A Settlement Terms Approved by the Commission. If a settlement is effected in a conciliation conference, the terms of which are approved by the Commission, the Commission shall have the written terms of settlement and adjustment prepared and signed by the parties; and the Commission shall thereupon enter upon all parties an Order in accord with the executed written terms of settlement and adjustment.

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Any such Order shall specify the right of the Commission to investigate and determine, at reasonable times, whether the terms of settlement and adjustment and the Order entered pursuant thereto have been or are being complied with. If the Commission determines that the respondent has violated or is violating the terms of settlement and adjustment and the Order entered pursuant thereto, the Commission may issue a written complaint based on the original charge of discrimination and order a public hearing thereon; provided, however, that any such complaint must be issued no later than twenty-four (24) months after Commission approval of the Conciliation Order.

003.03B Dismissal. The Commission may, without the consent of the complainant, dismiss the charge if, in its opinion, matters brought forth in the conciliation conference establish that the respondent has eliminated the effects of the alleged discriminatory public accommodations practice with respect to the complainant or has offered in good faith to eliminate the effects of the alleged discriminatory public accommodations practice with respect to the complainant in such manner as to effectuate the purposes of the Act and complainant has refused to accept such offer.

003.03C Settlement Terms Not Approved by the Commission. If the terms of settlement and adjustment agreed by the parties are not approved by the Commission, the Commission need not enter upon the parties any Order in accord with said terms of settlement and adjustment, and may close the case as having been settled on terms not approved by the Commission; and in such event, the Commission need not issue a complaint and order a public hearing in the event of an alleged violation of the terms of settlement and adjustment.

003.04 Time Limit and Waiver of Time Limit.

Except as provided in 2.003.03 of these Rules and Regulations, within ninety (90) days after a Commission ruling of reasonable cause on a charge that has been properly filed with the Commission, the Commission shall make a decision either to issue and serve a complaint or to dismiss the charge. The ninety (90) day time limit may be waived if both parties

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agree to do so in writing; provided, that even when both parties agree in writing to a waiver of the ninety (90) day time limitation, the Commission may in its discretion anytime after ninety (90) days from its reasonable cause finding determine that conciliation efforts have failed and promptly issue a complaint and notice of public hearing or dismiss the charge.

004 Complaint; Notice of Public Hearing; Answer.

004.01 Issuance and Service of Complaint and Notice of Public Hearing. In case of a determination by the Commission of failure to settle or adjust a charge by conciliation or in case of a determination by the Commission that the respondent has violated or is violating the terms of settlement and adjustment reached in a conciliation conference and the Order entered pursuant thereto, the Commission shall promptly issue and serve upon the respondent, by personal service, or by registered or certified mail, a written complaint, under oath or affirmation, together with a notice of public hearing. A copy of such written complaint and notice of public hearing shall at the same time and in the same manner be served upon all other parties.

004.02 Contents of Complaint. The complaint shall be signed by any member of the Commission or by the Executive Director, and shall also be signed by the complainant, her or his agent, or her or his attorney, under oath or affirmation, and shall contain:

004.02A An allegation that the charge of an alleged discriminatory public accommodations practice or practices was timely filed with the Commission and properly served upon the respondent.

004.02B An allegation that the respondent committed a discriminatory public accommodations practice or practices, substantially as alleged in the charge filed with the Commission.

004.02C A statement of the relief sought on behalf of the complainant.

004.03 Contents of Notice of Public Hearing. The notice of public hearing shall contain:

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004.03A The name of the Hearing Examiner who shall conduct such hearing; or in lieu thereof, a statement that the public hearing will be conducted by a Hearing Examiner to be designated subsequently by the Commission and that all parties to the proceeding will be notified in writing of the name of the Hearing Examiner so designated at least ten (10) days prior to the date of the public hearing.

004.03B The date and hour of the public hearing, which shall not be less than twenty (20) nor more than sixty (60) days after issuance and service of the complaint.

004.03C The place of hearing, which shall be at a place reasonably convenient for the parties; and in any event shall be in the county where the discriminatory public accommodations practice or practices were alleged to have occurred.

004.03D A statement advising both the complainant and the respondent of her or his right to appear and be represented in such hearing in person and/or by her or his attorney.

004.03E A statement advising the respondent of her or his right to file an answer to the complaint in accordance with these Rules and Regulations.

004.04 Answer. The following shall govern with respect to answers to complaints:

004.04A Time of filing. The Respondent may file an answer to the complaint within fifteen (15) days after the date of service of the complaint. Upon application in writing made to the Chairman prior to the end of said fifteen (15) day period, the Chairman may, for good cause shown, extend the time in which the answer may be filed.

004.04B Place and Manner of Filing. The answer shall be filed in duplicate at the office of the Commission in which the original charge was filed, by personal delivery or by certified or registered mail; and at the same time the party filing the answer shall similarly serve a copy of such answer on all other parties and upon the

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Hearing Examiner if one has been appointed. Proof of service upon the Hearing Examiner if one has been appointed. Proof of service upon the other party or parties and the Hearing Examiner, if one has been appointed shall accompany the copies of the answer filed with the Commission.

004.04C Form. The answer shall be in writing, with the original signed under the oath or affirmation of the respondent or the respondent's attorney, and shall contain (1) the correct name and post office address of the respondent; (2) the correct name, post office address and telephone number of the respondent's attorney, if respondent is represented by an attorney; (3) a specific denial of each and every allegation of the complaint controverted by the respondent or a denial of any knowledge or information sufficient to form a belief, or a statement of any matter constituting a defense against any allegation in the complaint.

004.04D Failure to Deny Allegation. Any allegation in the complaint which is not denied or admitted in the answer, unless the respondent shall state in the answer that she or he is without knowledge or information sufficient to form a belief, shall be deemed admitted.

004.04E New Matter in Answer. Any allegation of new matter contained in the answer shall be deemed denied by the complainant without the necessity of a reply being filed, unless otherwise ordered by the Commission.

004.04F Failure to File Answer. Notwithstanding any failure of the respondent to file an answer, the Hearing Examiner shall conduct the hearing at the time and place specified in the notice of hearing; and it shall be the responsibility of the Hearing Examiner conducting the hearing to attempt to elicit on the record the respondent's answer to each and every allegation contained in the complaint.

004.05 Amendment of Complaint and Answer. The following shall govern with respect to the amendment of the complaint and answer:

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004.05A Amendment of Complaint. At any time prior to the public hearing, the complainant may, by written request directed to the Commission, or any member thereof, or to the Hearing Examiner if one has been appointed, ask leave for amendment of the complaint, and shall at the same time specify the particular amendments to the complaint requested by the complainant. Prior to the issuance of any amended complaint hereunder, the Commission, or the member thereof or the Hearing Examiner granting leave to amend, as the case may be shall give to all parties to the proceeding at least three (3) days (exclusive of Saturdays, Sundays and official State holidays) advance written notice thereof. Copies of any amended complaint shall be filed with the Commission and served on all parties to the proceedings and upon the Hearing Examiner if one has been appointed. During a public hearing, with the consent of the Hearing Examiner, a complaint may be amended to conform to the evidence presented at the hearing.

004.05B Amendment of Answer. At any time prior to the public hearing, the respondent shall have the right to amend the answer to the original or amended complaint, as the case may be, by giving at least three (3) days (exclusive of Saturdays, Sundays and official State holidays) advance written notice to the Commission, or any member of the Commission or to the Hearing Examiner if one has been appointed. Copies of such notice shall be served at the same time on all parties to the proceeding in the manner and form provided for in section 2.004.04 of these Rules and Regulations. During a public hearing, with the consent of the Hearing Examiner, an answer may be amended to conform to the evidence presented at the Hearing.

004.05C Form of Amended Complaint and Answer. The original of all amended complaints and amended answers shall be in writing under oath or affirmation, and shall conform to and be served in accordance with the requirements of section 2 - (4) of these Rules and Regulations, except as otherwise provided by this section 2.004.05.